



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V
77 W. Jackson Blvd.
Chicago, Illinois 60604

January 25, 2005

Mr. David W. Frasher, City Administrator
Ashland City Hall
601 Main Street West
Ashland, Wisconsin 54806

Re: Ashland/NSP Lakefront Superfund Site
City of Ashland's Proposal to Purchase Rail Road Property (contained within the
Superfund Site boundary)

Dear Mr. Frasher:

As per our recent discussions, it is the United States Environmental Protection Agency's (EPA's) policy to be supportive of the redevelopment of both Superfund and Brownfield sites. In fact, EPA has a Superfund Redevelopment Program which is a coordinated national effort to facilitate the return of the country's most hazardous waste sites to productive use by implementing cleanup remedies that are consistent with the anticipated future use of the sites. While EPA's primary mission is to protect human health and the environment, Superfund cleanups have also been instrumental in returning contaminated sites to productive use. The Agency has increasingly recognized the need to work with communities as part of the cleanup process to determine what the future use of the site is likely to be, so that EPA can try to make the cleanup protective for that use. This will allow communities to reclaim these properties as valuable assets.

With regards to the future use of the properties that currently comprise the Ashland/NSP Lakefront Superfund Site, EPA has the City of Ashland's September 26, 2003 Comprehensive Plan which describes the existing recreational/waterfront trails, proposed trails, and the proposals for marina improvement and expansion. Also detailed in the Comprehensive Plan is the City's intent to work with the Canadian National Railroad to remove unused tracks, address the trestle and ore dock, as well as ensure that rail service to the industrial park is maintained.

In order to facilitate the plan's proposed removal of unused tracks and extend the waterfront trail, it is our understanding that the City of Ashland is considering purchasing the railroad's property, including railroad property currently within the boundary of the Ashland/NSP Lakefront Superfund Site.

Pursuant to the recent Brownfields amendments to the Superfund law, CERCLA §107(r)(1) defines a "bona fide prospective purchaser" (BFPP) as a person whose potential Superfund liability is derived solely due to current ownership or operation of a facility, as long as the

purchaser acquires ownership after January 11, 2002. The BFPP provision provides that a person meeting the criteria of a bona fide prospective purchaser is exempt from federal Superfund liability for the contamination situation existing on the property at the time of the purchase. To qualify as a BFPP, a person must (among other requirements) take “reasonable steps” with respect to stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resources exposure to earlier releases as described under CERCLA Section 101(40), 42 U.S.C. Section 9601(40). To the extent EPA’s response action increases the fair market value of the property, EPA has the authority to perfect a windfall lien on the property of a bona fide prospective purchaser pursuant to CERCLA Section 107(r), 42 U.S.C. Section 9607(r). The windfall lien is limited to the increase in fair market value attributable to EPA’s response action, and is capped by the amount of EPA’s unrecovered response costs.

With regards to the removal of tracks and the paving of the former track area, EPA believes that such work can be compatible with potential Site cleanup scenarios. However, since a remedy has not yet been selected, such compatibility cannot be known for certain. The railroad property is below a bluff and the subsurface of the bluff is known to contain coal tar, within its geological formations and within its groundwater. Some form of engineering may be necessary in the future, either on or near the railroad tracks to effectuate a remedy for that contamination. If the City proposes to install the pavement and trail prior to selection and implementation of the remedy, the City must be cognizant that in the future, the trail may be made off-limits for a period of time, while construction of a remedy is implemented. Further, the trail may have to be relocated, before, during, or after construction of some future remedy, to allow for implementation of a remedy. In any case, when EPA evaluates remedies for the Site, the existence of, or need for a trail, will be incorporated into the remedy selection process.

With regards to the “reasonable steps” criterion of the BFPP provision, please note that because there is currently subsurface contamination at the Site, and EPA is working with NSP-Wisconsin on delineating its extent, the following would entail some of the appropriate reasonable steps necessary to prevent or mitigate a release of hazardous substance at the Site:

- Avoid any activities that may result in the disturbance or migration of the contaminated soils and groundwater;
- Avoid any activities that may result in the exposure of individuals and ecosystems to the contaminated soils and groundwater;
- Refrain from any activities that would involve the penetration to the water table;
- Refrain from the tampering, opening, or damaging of any of the monitoring wells or piezometers located on the property;
- Refrain from interfering with the existing response activities ongoing at the property as conducted by EPA and NSP-Wisconsin.

Before utilizing the property, or implementing any work concerning the tracks and/or paving over those areas, EPA recommends that you contact the EPA Remedial Project Manager (Sharon Jaffess) for further compatibility approval.

This letter does not provide a release from CERCLA liability, but only provides information with respect to certain reasonable steps based on the information EPA has available to it. This letter is

based on the nature and extent of contamination known to EPA at this time. If additional information regarding the nature and extent of hazardous substance contamination at the Site becomes available, additional actions may be necessary to satisfy the reasonable steps criterion. In particular, if new areas of contamination are identified (which may happen as the RI field work occurs this coming Spring), additional actions may be necessary to satisfy the reasonable steps criterion. In particular, if new areas of contamination are identified or if new uses for the property are determined, you should ensure that reasonable steps are undertaken. As the property owner, you should ensure that you are aware of the condition of your property so that you are able to take reasonable steps with respect to any hazardous substance contamination at or on the property. The RI/FS Work Plan contains detailed site maps and figures that provide the current known delineation of contamination and EPA will ensure that you have access to this information.

Please note that the BFPP provision has a number of conditions in addition to those requiring the property owner to take reasonable steps. Taking reasonable steps and many of the other conditions are continuing obligations of the BFPP that must be undertaken throughout your ownership of the property. You will need to assess whether your actions satisfy each of the statutory conditions for the BFPP provision and continue to meet the applicable conditions in order to retain the limitation on liability.

EPA hopes this information is useful to you. If you have any questions, or wish to discuss this letter, please feel free to contact Sharon Jaffess, Remedial Project Manager, at (312) 353-0536, or myself at (312) 353-8870.

Sincerely,

Craig Melodia
Associate Regional Counsel